

REFERENCE TITLE: liquor licenses; local recommendations

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2040

Introduced by
Representatives Prezelski, Lopes

AN ACT

AMENDING SECTIONS 4-201, 4-203 AND 4-213, ARIZONA REVISED STATUTES; RELATING
TO LIQUOR LICENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 4-201, Arizona Revised Statutes, is amended to
3 read:

4 4-201. Licensing; application procedure in city, town or
5 county; burden of proof

6 A. A person desiring a license to manufacture, sell or deal in
7 spirituous liquors shall make application to the director on a form
8 prescribed and furnished by the director.

9 B. A person desiring a license within an incorporated city or town
10 shall make the application in triplicate and shall file the copies with the
11 director. The director shall remit two copies to the city or town clerk.
12 The city or town clerk shall immediately file one copy in the clerk's office
13 and post the other for a period of twenty days in a conspicuous place on the
14 front of the premises where the business is proposed to be conducted, with a
15 statement requiring any person who is a bona fide resident residing or owning
16 or leasing property within a one mile radius from the premises proposed to be
17 licensed, and who is in favor of or opposed to the issuance of the license,
18 to file written arguments in favor of or opposed to **THE** issuance of the
19 license with the clerk within twenty days after the date of posting. The
20 posting shall contain substantially the following:

21 Notice

22 A hearing on a liquor license application shall be held before
23 the local governing body at the following date, time and place:
24 (Insert date, time and address)

25 The local governing body will recommend to the state liquor
26 board whether the board should grant or deny the license. The
27 state liquor board may hold a hearing to consider the
28 recommendation of the local governing body. Any person residing
29 or owning or leasing property within a one-mile radius may
30 contact the state liquor board in writing to register as a
31 protestor. To request information regarding procedures before
32 the board and notice of any board hearings regarding this
33 application, contact the state liquor board at:
34 (Insert address and telephone number).

35 No arguments shall be filed or accepted by the city or town clerk thereafter.
36 This subsection shall not be construed to prevent a bona fide resident
37 residing or owning or leasing property within a one-mile radius from the
38 premises proposed to be licensed from testifying in favor of or in opposition
39 to the issuance of the license, regardless of whether or not the person is a
40 user or nonuser of spirituous liquor.

41 C. The governing body of the city, town or county shall then enter an
42 order recommending approval or disapproval within sixty days after filing of
43 the application and shall file a certified copy of the order with the
44 director. If the recommendation is for disapproval, a statement of the
45 specific reasons containing a summary of the testimony or other evidence

1 supporting the recommendation for disapproval shall be attached to the order.
2 All petitions submitted to the governing body within the twenty-day period
3 for filing protests shall be transmitted to the director with the certified
4 copy of the order.

5 D. If a person applies for a license to conduct a spirituous liquor
6 business outside an incorporated city or town, the director shall remit two
7 copies of the application to the clerk of the board of supervisors of the
8 county where the applicant desires to do business, and the proceedings by the
9 clerk and board of supervisors shall be as provided for cities and towns.

10 E. Upon receipt of an application for a spirituous liquor license, the
11 director shall set the application for hearing by the board upon a date
12 following the expiration of the time fixed for the submitting of the
13 certified order by the governing body of the city or town or the board of
14 supervisors. If the city or town or the county recommends approval of the
15 license no hearing is required unless the director, the board or any
16 aggrieved party requests a hearing on the grounds that the public convenience
17 and the best interest of the community will not be substantially served if a
18 license is issued. Any person residing or owning or leasing property within
19 a one mile radius of the proposed location may file a written protest with
20 the director no later than fifteen calendar days following action by the
21 local governing body or sixty days after filing the application. If no
22 hearing is requested by the director, the board or any aggrieved party, the
23 application may be approved by the director. If the recommendation is for
24 disapproval of an application or if no recommendation is received, the board
25 shall hold a hearing. If the city, town or county recommends approval of the
26 license pursuant to subsection C, the director may cancel the hearing and
27 issue the license unless the board or any aggrieved party requests a hearing.
28 The certified order, the reasons contained in the order and the summary of
29 the testimony and other evidence supporting the city, town or county
30 disapproval of the recommendation shall be read into the record before the
31 board and shall be considered as evidence by the board. The board shall
32 consider the certified order together with other facts and a report of the
33 director relating to the qualifications of the applicant. If the governing
34 body of the city or town or the board of supervisors fails to return to the
35 director, as provided in subsections C and D, its order of approval or
36 disapproval, the board shall proceed with further consideration of the
37 application by holding an administrative hearing. An application shall be
38 approved or disapproved within one hundred five days after filing of the
39 application.

40 F. A hearing may be conducted by an administrative law judge at the
41 request of the board to make findings and recommendations for use by the
42 board in determining whether to grant or deny a license. The administrative
43 law judge shall submit a report of findings to the board within twenty days
44 of the hearing. The board may affirm, reverse, adopt, modify, supplement,
45 amend or reject the administrative law judge's report in whole or in part.

1 G. In all proceedings before the governing body of a city or town, the
2 board of supervisors of a county or the board, the applicant bears the burden
3 of showing that the public convenience requires and that the best interest of
4 the community will be substantially served by the issuance of a license.

5 H. In order to prevent the proliferation of spirituous liquor licenses
6 the department may deny a license to a business on the grounds that such
7 business is inappropriate for the sale of spirituous liquor. An
8 inappropriate business is one that cannot clearly demonstrate that the sale
9 of spirituous liquor is directly connected to its primary purpose and that
10 the sale of spirituous liquor is not merely incidental to its primary
11 purpose.

12 I. The board shall adopt, by rule, guidelines setting forth criteria
13 for use in determining whether the public convenience requires and the best
14 interest of the community will be substantially served by the issuance or
15 transfer of a liquor license at the location applied for. These guidelines
16 shall govern the recommendations and other approvals of the department and
17 the local governing authority.

18 J. If the governing body of a city or town **OR THE BOARD OF SUPERVISORS**
19 **OF A COUNTY** recommends disapproval ~~by a two-thirds vote of the members~~
20 ~~present and voting on an application~~ for the issuance or transfer of a
21 spirituous liquor license that, if approved, would result in a license being
22 issued at a location either having no license or having a license of a
23 different series, the application shall not be approved unless the board
24 decides to approve the application by a two-thirds vote of the ~~members~~
25 ~~present and voting~~ **TOTAL MEMBERSHIP OF THE BOARD.**

26 Sec. 2. Section 4-203, Arizona Revised Statutes, is amended to read:
27 **4-203. Licenses; issuance; transfer; reversion to state**

28 A. A spirituous liquor license shall be issued only after satisfactory
29 showing of the capability, qualifications and reliability of the applicant
30 and, with the exception of club licensees, that the public convenience
31 requires and that the best interest of the community will be substantially
32 served by the issuance.

33 B. The license shall be to manufacture, sell or deal in spirituous
34 liquors only at the place and in the manner provided in the license. A
35 separate license shall be issued for each specific business, and each shall
36 specify:

37 1. The particular spirituous liquors which the licensee is authorized
38 to manufacture, sell or deal in.

39 2. The place of business for which issued.

40 3. The purpose for which the liquors may be manufactured or sold.

41 C. A spirituous liquor license issued to a bar, a liquor store or a
42 beer and wine bar shall be transferable as to any permitted location within
43 the same county, provided such transfer meets the requirements of an original
44 application. Such spirituous liquor license may be transferred to a person
45 qualified to be a licensee, provided such transfer is pursuant to either

1 judicial decree, nonjudicial foreclosure of a legal or equitable lien, a bona
2 fide bulk sale of the entire business and stock in trade, or such other bona
3 fide transactions as may be provided for by rule. Any change in ownership of
4 the business of a licensee, directly or indirectly, as defined by rule is
5 deemed a transfer.

6 D. All applications for a new license pursuant to section 4-201 or for
7 a transfer to a new location pursuant to subsection C of this section shall
8 be filed with and determined by the director, except when the governing body
9 of the city or town or the board of supervisors receiving such application
10 pursuant to section 4-201 orders disapproval of such application or makes no
11 recommendation or when the director, the state liquor board or any aggrieved
12 party requests a hearing. Such application shall then be presented to the
13 state liquor board, and the new license or transfer shall not become
14 effective unless approved by **A TWO-THIRDS VOTE OF THE TOTAL MEMBERSHIP OF** the
15 state liquor board.

16 E. A person who assigns, surrenders, transfers or sells control of a
17 business which has a spirituous liquor license shall notify the director
18 within fifteen business days after the assignment, surrender, transfer or
19 sale. No spirituous liquor license shall be leased or subleased. A
20 concession agreement entered into under section 4-205.03 is not considered a
21 lease or sublease in violation of this section.

22 F. If a person other than those persons originally licensed acquires
23 control over a license or licensee, the person shall file notice of the
24 acquisition with the director within fifteen business days after such
25 acquisition of control and a list of officers, directors or other controlling
26 persons on a form prescribed by the director. All officers, directors or
27 other controlling persons shall meet the qualifications for licensure as
28 prescribed by this title. On request, the director shall conduct a
29 preinvestigation prior to the assignment, sale or transfer of control of a
30 license or licensee, the reasonable costs of which, not to exceed one
31 thousand dollars, shall be borne by the applicant. The preinvestigation
32 shall determine whether the qualifications for licensure as prescribed by
33 this title are met. On receipt of notice of an acquisition of control or
34 request of a preinvestigation, the director shall forward the notice within
35 fifteen days to the local governing body of the city or town, if the licensed
36 premises is in an incorporated area, or the county, if the licensed premises
37 is in an unincorporated area. The local governing body of the city, town or
38 county may protest the acquisition of control within sixty days based on the
39 capability, reliability and qualification of the person acquiring control.
40 If the director does not receive any protests, the director may protest the
41 acquisition of control or approve the acquisition of control based on the
42 capability, reliability and qualification of the person acquiring control.
43 Any protest shall be set for a hearing before the board. Any transfer shall
44 be approved or disapproved within one hundred five days of the filing of the
45 notice of acquisition ~~and~~ **OF** control. The person who has acquired control of

1 a license or licensee has the burden of an original application at the
2 hearing, and the board shall make its determination pursuant to section 4-202
3 and this section with respect to capability, reliability and qualification.
4 IF THE LOCAL GOVERNING BODY OF THE CITY OR TOWN OR THE BOARD OF SUPERVISORS
5 OF THE COUNTY PROTESTS THE ACQUISITION OF CONTROL, THE TRANSFER SHALL NOT
6 BECOME EFFECTIVE UNLESS APPROVED BY A TWO-THIRDS VOTE OF THE TOTAL MEMBERSHIP
7 OF THE BOARD.

8 G. A licensee who holds a license in nonuse status for more than five
9 months shall be required to pay a one hundred dollar surcharge for each month
10 thereafter. The surcharge shall be paid at the time the license is returned
11 to active status. A license automatically reverts to the state after being
12 held in continuous nonuse in excess of thirty-six months. The director may
13 waive the surcharge and may extend the time period provided in this
14 subsection for good cause. A license shall not be deemed to have gone into
15 active status if the license is transferred to a location that at the time of
16 or immediately before the transfer had an active license of the same type,
17 unless the licenses are under common ownership or control.

18 H. A restructuring of a licensee's business is an acquisition of
19 control pursuant to subsection F of this section and is a transfer of a
20 spirituous liquor license and not the issuance of a new spirituous liquor
21 license if both of the following apply:

22 1. All of the controlling persons of the licensee and the new business
23 entity are identical.

24 2. There is no change in control or beneficial ownership.

25 I. If subsection H of this section applies, the licensee's history of
26 violations of this title is the history of the new business entity. The
27 director may prescribe a form and shall require the applicant to provide the
28 necessary information to ensure compliance with this subsection and
29 subsections F and G of this section.

30 J. Notwithstanding subsection B of this section, the holder of a
31 retail license having off-sale privileges may deliver spirituous liquor off
32 of the licensed premises in connection with the sale of spirituous liquor.
33 The licensee may maintain a delivery service and shall be liable for any
34 violation committed in connection with any sale or delivery of spirituous
35 liquor, provided that such delivery is made by an employee at least
36 twenty-one years of age. The retail licensee shall collect payment for the
37 price of the spirituous liquor no later than at the time of delivery. The
38 director shall adopt rules that set operational limits for the delivery of
39 spirituous liquors by the holder of a retail license having off-sale
40 privileges. For the purposes of this subsection, an independent contractor
41 or the employee of an independent contractor is deemed to be an employee of
42 the licensee when making a sale or delivery of spirituous liquor for the
43 licensee.

44 K. Nonretail Arizona licensees may transport spirituous liquors for
45 themselves in vehicles owned, leased or rented by such licensee.

1 L. Notwithstanding subsection B of this section, an off-sale retail
2 licensee may provide consumer tasting of wines off of the licensed premises.

3 M. The director may adopt reasonable rules to protect the public
4 interest and prevent abuse by licensees of the activities permitted such
5 licensees by subsections J and L of this section.

6 N. Failure to pay any surcharge prescribed by subsection G of this
7 section or failure to report the period of nonuse of a license shall be
8 grounds for revocation of the license or grounds for any other sanction
9 provided by this title. The director may consider extenuating circumstances
10 if control of the license is acquired by another party in determining whether
11 or not to impose any sanctions under this subsection.

12 O. If a licensed location has not been in use for two years, the
13 location must requalify for a license pursuant to subsection A of this
14 section and shall meet the same qualifications required for issuance of a new
15 license except when the director deems that the nonuse of the location was
16 due to circumstances beyond the licensee's control.

17 P. If the licensee's interest is forfeited pursuant to section 4-210,
18 subsection L, the location shall requalify for a license pursuant to
19 subsection A of this section and shall meet the same qualifications required
20 for issuance of a new license except when a bona fide lienholder demonstrates
21 mitigation pursuant to section 4-210, subsection K.

22 Sec. 3. Section 4-213, Arizona Revised Statutes, is amended to read:
23 4-213. Restaurant audit

24 A. The director may require a restaurant to submit an audit of its
25 records to demonstrate compliance with section 4-205.02. The director shall
26 not require an establishment to submit to such an audit more than once a year
27 after the initial twelve months of operation even if the establishment is
28 allowed to continue operating as a restaurant pursuant to subsection E of
29 this section.

30 B. Except as provided in subsection D of this section, the department
31 shall audit accounts, records and operations of a licensee that cover a
32 twelve month period. When conducting an audit, the department shall use
33 generally accepted auditing standards. An establishment that averages at
34 least forty per cent of its gross revenue from the sale of food during the
35 twelve month audit period shall be deemed to comply with the gross revenue
36 requirements of section 4-205.02. The twelve month audit period shall fall
37 within the sixteen months immediately preceding the beginning of the audit.

38 C. If the audit or a consent agreement that may be offered at the
39 discretion of the director and that is signed by the licensee and the
40 director reveals that the licensee did not meet the definition of a
41 restaurant as prescribed in section 4-205.02 and the percentage of food sales
42 determined by the audit or consent agreement was:

43 1. Less than thirty per cent, notwithstanding section 4-209,
44 subsection A, the director shall deem the license to have been surrendered or
45 may revoke the license as provided in section 4-205.02, subsection D.

1 2. At least thirty per cent but less than thirty-seven per cent, the
2 department shall allow the licensee a six month period to continue to operate
3 under the restaurant license, during which the licensee shall either:

4 (a) Replace the license with a bar or beer and wine bar license,
5 except that, at the end of that six month period, the department shall revoke
6 the restaurant license or the licensee shall surrender the restaurant
7 license.

8 (b) Obtain permission from the department to continue operating with a
9 restaurant license pursuant to subsection E of this section.

10 3. At least thirty-seven per cent but less than forty per cent, the
11 licensee shall be granted a period of one year to continue to operate under
12 the restaurant license, during which the licensee shall attempt to increase
13 the food percentage to at least forty per cent. If the licensee does not
14 increase the percentage of food sales to at least forty per cent, the
15 department shall allow the licensee a six month period to continue to operate
16 under the restaurant license, during which the licensee shall either:

17 (a) Replace the license with a bar or beer and wine bar license,
18 except that, at the end of the six month period, the department shall revoke
19 the restaurant license or the licensee shall surrender the restaurant
20 license.

21 (b) Obtain permission from the department to continue operating with a
22 restaurant license pursuant to subsection E of this section.

23 D. The department may conduct an audit of a licensee described in
24 section 4-209, subsection B, paragraph 12 after twelve months following the
25 beginning of operations as a restaurant by the licensee to determine
26 compliance by the licensee with section 4-205.02, except that the department
27 may conduct an audit of a licensee within the first twelve months of
28 operation if the licensee has made a substantial modification in the
29 restaurant equipment, service or entertainment items or seating capacity
30 during that twelve month period, in which event the department may conduct
31 the audit for a period of less than twelve months.

32 E. A restaurant licensee may continue to operate with its restaurant
33 license if its food sales are at least thirty per cent and less than forty
34 per cent and the department approves the continuation of the restaurant
35 license pursuant to this subsection and subsections C, F, G, H and I of this
36 section. The department shall not approve more than fifteen restaurant
37 licenses pursuant to this subsection and subsections C, F, G, H and I of this
38 section in each of the fiscal years 2006-2007 and 2007-2008. The department
39 shall not approve any additional licenses pursuant to this subsection and
40 subsections C, F, G, H and I of this section from consent agreements entered
41 into or audits conducted in any fiscal year after 2007-2008. The department
42 may approve a request submitted by the licensee to continue to operate with
43 its restaurant license only if all of the following apply at the time the
44 licensee files its request with the department:

1 1. The restaurant has a sufficient number of cooks, food preparation
2 personnel and wait staff to prepare and provide the restaurant services that
3 are necessary for the menu offered by the licensee.

4 2. The restaurant's equipment is of a sufficient grade and the size of
5 the restaurant's kitchen is appropriate to the menu offered and the kitchen
6 occupies not less than twenty per cent of the total floor space of the
7 licensed premises.

8 3. The menu is of a type consistent with a restaurant operation. In
9 making a determination pursuant to this paragraph, the department may
10 consider the proportion of food sales to alcohol sales, the price of
11 spirituous liquor beverages and food served by the licensee and whether the
12 licensee provides reduced price or complimentary food and beverages.

13 4. Not more than thirty per cent of the public interior area floor
14 space consists of pool tables, dart or arcade games, barstools, cocktail
15 tables and similar types of seating and dance floors, and the aggregate area
16 of all dance floors on the premises is not greater than ten per cent of the
17 total floor space of the public area of the premises.

18 5. The name of the restaurant does not include terms associated with
19 alcohol consumption, such as "bar", "tavern", "pub", "spirits", "club",
20 "lounge", "cabaret", "cantina" or "saloon".

21 6. Disposable dinnerware and smallware, including dining utensils, are
22 not used except in outdoor areas.

23 F. If the department intends to approve a restaurant's continuation of
24 operation pursuant to subsection E of this section:

25 1. The department shall advise the governing body of the city or town
26 if the premises are within the incorporated limits of a city or town or the
27 county of the department's intent.

28 2. The city or town or the county shall post a notice for at least
29 twenty days on the licensed premises that the licensee has made a request for
30 continuation to operate with a restaurant license and invite bona fide
31 residents who own, lease or reside on property within a one mile radius of
32 the licensed premises to file written comments with the department regarding
33 the request within thirty days of the first posting of the notice.

34 G. If the local jurisdiction through its governing body or its
35 authorized agent does not object within ninety days, the licensee may
36 continue its operation as a restaurant.

37 H. If the department intends to disapprove a restaurant's continuation
38 of operation pursuant to subsection E of this section, or if the local
39 jurisdiction or its agent timely objects to its continuation, the department
40 shall set a hearing before the board and the local jurisdiction shall post a
41 notice of the hearing for a period of at least twenty days on the licensed
42 premises. The city or town or the county may testify at the hearing and bona
43 fide residents who own, lease or reside on property within a one mile radius
44 of the licensed premises may testify before the board regarding the
45 licensee's request. The board shall determine whether the restaurant may

1 continue its operation based on consideration of the criteria listed in
2 subsection E of this section. IF THE GOVERNING BODY OF THE CITY OR TOWN OR
3 THE BOARD OF SUPERVISORS OF THE COUNTY OBJECTS TO THE CONTINUATION, THE
4 CONTINUATION SHALL NOT BECOME EFFECTIVE UNLESS APPROVED BY A TWO-THIRDS VOTE
5 OF THE TOTAL MEMBERSHIP OF THE BOARD.

6 I. A restaurant licensee may continue to operate with its restaurant
7 license pursuant to subsection E of this section, if the restaurant and the
8 restaurant licensee continue to meet the requirements of this subsection,
9 subsection E of this section and any other statute. As a condition of
10 continuing operation as a restaurant under subsection E of this section, the
11 department may require the licensee to specifically acknowledge the
12 representations made by the licensee regarding its operations in support of
13 the licensee's continuing operation as a restaurant. Notwithstanding
14 subsection A of this section, if the licensee changes its operation in any
15 way that materially and detrimentally affects the representations made by the
16 licensee, the department may audit the licensee or terminate the license
17 without an audit.